

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

IN RE:)
)
Arch Enterprises, LLC, d/b/a McDonalds)
)
Complainant)
)
v.)
)
Palmetto Wastewater Reclamation LLC,)
d/b/a Alpine Utilities)
)
Defendant.)
_____)

ANSWER IN OPPOSITION TO
PETITION FOR REHEARING OR
RECONSIDERATION

Defendant Palmetto Wastewater Reclamation LLC (“PWR” or “Company”), pursuant to 10 S.C. Code Regs. 103-826 (2012), by and through its undersigned counsel, submits the within Answer in Opposition to the Petition for Rehearing or Reconsideration (“Petition”) of Arch Enterprises, LLC, d/b/a McDonalds (“Petitioner”) dated May 14, 2014, in the above-captioned matter. In that regard, PWR would respectfully show unto this Honorable Commission as follows:

1. Paragraph 1 of the Petition asserts no matter of fact or issue of law requiring a response. PWR craves reference to the provisions of S.C. Code Ann. § 58-5-210 (1976) for its content.

2. PWR admits the allegations of Paragraph 2 of the Petition as far as they go. Further responding, to this paragraph, PWR submits that the complaint of Petitioner also acknowledged that Petitioner had been advised by the Company that the amount then sought was

\$32,480.00, which advice was recounted in PWR's Motion to Dismiss on an Expedited Basis dated April 11, 2014 ("Motion").

3. PWR denies the allegation of paragraph 3 that the Company filed the Motion on April 14, 2014. To the contrary, the Commission's docket file reflects that the Motion was filed with this Commission and served on Petitioner on April 11, 2014. PWR requests that the Commission take notice of its own files and records in regard to the aforementioned filing and service dates which are reflected on the Motion, associated certificate of service, docket cover sheet, and filing correspondence.¹

4. PWR admits that paragraph 4 of the Petition reflects the language of item number 8 of the Commission's meeting agenda for May 1, 2014.

5. PWR denies the allegation of paragraph 5 of the Petition to the extent that it suggests that the Commission did not give notice of its intent to act on the Motion. PWR craves reference to the heading which precedes the enumerated items, including item number 8, of the agenda which states as follows: "**COMMISSION ACTION ON THE FOLLOWING ITEMS:**" and to the language of each enumerated item under such heading – all of which provide that the Commission will "discuss" each such item upon which action was to be taken as noticed by the Commission. The Company submits that it is not possible for the Commission to act on a motion without some discussion.

6. PWR denies the allegations of paragraph 6 of the Petition to the extent that it alleges that Petitioner had no notice that the Motion could be decided by the Commission on May 1, 2014, and that the Commission's meeting agenda for May 1, 2014 gave Petitioner "no indication that the Commission would take dispositive action on [the] Motion." As to the latter,

¹ A courtesy copy of the Motion was also provided to counsel for Petitioner by electronic mail message on April 12, 2014, a copy of which is attached hereto and incorporated herein by reference as Exhibit 1. Cf. R. 103-830.1 of the Commission's Rules of Practice and Procedure.

and as noted in paragraph 5 of this Answer, the Commission's Meeting Agenda for May 1, 2014, which was publicly posted on April 25, 2014, specifically states that the Commission will take action on the Motion. As to the former, the Motion, the accompanying docket cover sheet, and the filing correspondence all plainly state PWR's request that the Commission expedite its review of the Motion. Moreover, the Motion specifically requests "that the Commission rule on this motion...without hearing or oral argument" and that the "Motion be considered on an expedited basis without oral argument so that PWR may have the opportunity to be promptly relieved from the requirement" that it refrain from disconnection of Petitioner's premises. *See* Motion at 2, 9-10.

7. Answering paragraph 7 of the Petition, PWR submits that although the term "retroactive ratemaking" does not appear in Order No. 2014-400, the Commission determined that the substantive basis for dismissal of the Complaint advanced in the Motion was correct. Further responding to this paragraph of the Petition, the Company submits that the Commission order finds that the relief sought by Petitioner in its complaint "would be unlawful" on more than one ground, one of which was an improper retroactive reduction in a previously approved rate. PWR craves reference to the language of the Commission's order for its content and the Motion for its content.

8. PWR admits the allegation of paragraph 8 of the Petition and, further responding, notes that Order No. 2014-400 was issued by the Commission on May 1, 2014.

9. PWR admits the allegation of paragraph 9 of the Petition.

10. PWR admits so much of paragraph 10 of the Petition as alleges that a Standing Hearing Officer Directive was issued by F. David Butler, Esquire, on May 6, 2014, cancelling the hearing on Petitioner's Complaint that had been scheduled for July 9, 2014. The Company is

without sufficient information to form a belief as to any purpose of said Standing Hearing Officer Directive beyond that reflected in same, and therefore denies the remaining allegation of this paragraph of the Petition.

11. PWR denies the allegations of paragraph 11 of the Petition. PWR also submits that Petitioner was not entitled to an evidentiary hearing or oral argument on the Motion under any provision of law. Further responding, PWR submits that Petitioner had an opportunity to be heard on the Motion pursuant to 10 S.C. Code Regs. R. 103-829.A (2012), but failed to respond to the Motion as required by that rule. PWR further submits that Petitioner's failure to make the required response to the Motion justified a conclusion that Petitioner did not have a basis in law to oppose the substance of the Motion.

12. Paragraph 12 of the Petition asserts no matter of fact or issue of law requiring a response. PWR craves reference to the provisions of 10 S.C. Code Regs. 103-800 (2012) for its content.

13. PWR admits so much of Paragraph 13 of the Petition as alleges that 10 S.C. Code Regs. 103-824 sets forth the requirements for filing a written complaint and provides that a person "may file a written complaint with the Commission requesting a proceeding."

14. PWR admits so much of Paragraph 14 of the Petition as alleges that 10 S.C. Code Regs. 103-829 (2012) sets forth the requirements for and pertaining to written motions, responses thereto, and replies to responses thereto. Further responding to this paragraph of the Petition, PWR submits that R. 103-829.A required that Petitioner file and serve a response to the Motion – which Petitioner failed to do. PWR craves reference to the provisions of R.103-824.B for its content.

15. PWR denies the allegations of paragraph 15 of the Petition. Further responding, PWR submits that the allowance of oral arguments on motions is entirely within the discretion of the Commission and that there is no provision of law requiring that the Commission conduct an oral argument on a motion. The plain language of R. 103-829.B simply contemplates that the Commission may schedule an oral argument on a motion prior to or at a hearing. It does not require an oral argument. Even assuming that R. 103-829 can be read in the manner asserted by Petitioner, which is disputed, the regulation cannot be read to require an oral argument on a motion where, as here, the non-moving party has failed to meet its requirement to file and serve a response to the motion under Rule 103-829.A. Furthermore, the Motion specifically requested that the Commission expedite its review and decide the Motion without oral argument. Petitioner failed to oppose this request. Even assuming R. 103-829.B can be read consonant with Petitioner's interpretation, the Commission effectively granted PWR's request that any requirement for an oral argument be waived, which the Commission may do. *See* 10 S.C. Code Ann. R. 103-803 (2012).²

16. PWR denies the allegations of paragraph 16 of the Petition. Further responding, PWR submits that no hearing was conducted in this matter at the Commission agenda meeting on May 1, 2014, that the Petitioner had notice that the Commission may decide the matter without oral argument and that it would do so on May 1, 2014, at its agenda meeting, that Petitioner was not entitled to oral argument on the Motion as a matter of law, and that Petitioner

² Implicit in Order No. 2014-400 is a finding that it is not contrary to the public interest that an oral argument on a motion to dismiss a complaint be withheld where there is an unrefuted assertion by the movant that the relief requested by the complainant is not available as a matter of law. Even if Petitioner's argument in this regard was valid, at most it could justify a determination by the Commission in an order addressing the Petition that, *nunc pro tunc*, the Commission waived any requirement for an oral argument on the ground that the circumstances warrant such a waiver and that same is not contrary to the public interest.

waived any right it could have had to be heard by its failure to comply with the provisions of R. 103-829.A and submit a written response to the Motion.

17. PWR denies the allegations of paragraph 17 of the Petition. Further responding to the allegations of this paragraph of the Petition, PWR submits that Petitioner has failed to specify any factual or legal errors in the determination made by the Commission in Order No. 2014-400 that the relief sought by Petitioner's complaint is unavailable as a matter of law. *See* 10 S.C. Code Regs. 103-825.A (4) (2012). Similarly, Petitioner has failed to set forth specifically the ground on which it considers the Commission's decision on the Motion to be unlawful. *See* S.C. Code Ann. § 58-5-330 (Supp. 2013). Petitioner has yet to submit (and cannot now submit) to this Commission any authority for the proposition that the relief sought in its Complaint could be lawfully granted by the Commission. *See* 10 S.C. Code Regs. 103-533 (2012). *See also, SCE&G Co. v. PSC*, 275 S.C. 487, 491, 272 S.E.2d 793, 795 (1980). Having failed to allege any error on the part of the Commission with respect to the substantive law found by the Commission to govern the Motion, Petitioner cannot have been prejudiced by the result reflected in Order No. 2014-400.

18. To the extent the Petition alleges any other or further matter, same is denied and strict proof thereof is demanded.

WHEREFORE, having fully set forth its Answer, the Company requests that the Petition be denied and that such other and further relief be granted by the Commission to the Company as is just and proper.

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Columbia, South Carolina
This 16th day of May, 2014